IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3034 OF 2005

Mr. M.J. Pandit ..Petitioner.

Versus

The State of Maharashtra & Ors. ..Respondents.

Mr. V.A.Gangal & Harshad Deshpande for the Petitioner.

CORAM : S. A. BOBDE, J.
DATED : 17TH OCTOBER, 2005.

P.C.:

1. The petitioner has challenged the order of the Divisional Joint Registrar dated 23.09.2004 by which the said authority has rejected the petitioner's revision and uphold the recovery certificate under section 101 of the MCS Act,1960. It is clear from the judgment in revision vide paragraph 5, that the revision is rejected on the ground that the applicant admitted that he has not paid dues of the respondent No.1 society and therefore, the respondent No.2 Dy. Registrar has rightly issued the impugned recovery certificate dated 15.03.2002.

2. Mr. Gangal, the learned counsel for the petitioner vehemently submitted that the petitioner

has spent large amount on repairs of the flat, which was in fact the duty of the society and the petitioner was, therefore, entitled to claim set-off for the expenditure he has incurred. It is clear that this set- off is being claimed on the basis of a counter claim. Such a counter-claim is not within the purview of the proceedings under section 101 and the set-off of this nature would have to be established on evidence that in fact there were leakages into the flats and that the petitioner spent a certain sum for the repairs of the flat which was in fact the duty of the society. All these aspects will have to be established in independent proceedings. In view of the fact that the petitioner has admitted the dues claimed by the society, I see no reason to interfere.

3. Mr. Gangal next submitted that the petitioner did not get sufficient opportunity to contest the claim of the society. This does not appear to be so from the averments made in paragraph 5 of the memo of revision, where the petitioner himself stated that the Dy. Registrar directed the Society to submit a complete copy of the claim application which was duly furnished by the society. Having regard to the nature of the petitioner’s counter- claim, I am of view that the impugned order does not warrant any interference.

4. Petition is hereby dismissed. The dismissal of this petition shall not dis-entitle the petitioner to establish his claim that he has been compelled to make expenditure which were supposed to be made by the Society before the appropriate forum as may be advised.

DT. 17.10.05 (S.A.BOBDE,J)

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